

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application No.	: 10/617,477	Confirmation No. 3454
Appellants	: Steven Roy Lipscomb et al.	
Filed	: July 11, 2003	
Title	: GAME TABLE WITH INTEGRAL LIGHTING SYSTEM	
TC/A.U.	: 3711	
Examiner	: Dolores R. Collins	
Docket No.	: 01YA-120318	
Customer No.	: 30764	
Date	: March 4, 2008	

APPELLANTS' BRIEF UNDER 37 C.F.R. § 41.37

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Commissioner for Patents
PO Box 1450
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Sir or Madam:

This is an appeal from the Examiner's Final Office Action mailed on October 29, 2007 ("the Final Office Action"), finally rejecting claims 7, 22 and 31-40 in the above-identified patent application.

I. REAL PARTY IN INTEREST

The real party in interest in this application is the only assignee, WPT Enterprises, Inc.

II. RELATED APPEALS AND INTERFERENCES

Appellants and Appellants' legal representatives know of no related appeals or interferences. Therefore, no appeal or interference known to Appellants or Appellants' legal representatives will directly affect, be directly affected by, or have a bearing on the Board's decision in the pending appeal.

III. STATUS OF CLAIMS

Claims 7, 9, 10, 22 and 31-40 are pending in the application. Claims 9 and 10 have been allowed by the Examiner.¹ Claims 7, 22 and 31-40 have been finally rejected by the Examiner. Claims 1-6, 8, 11-21 and 23-30 have been canceled. Appellants have appealed the rejection of claims 7, 22 and 31-40.

IV. STATUS OF AMENDMENTS

No amendments were filed after final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

A. Independent Claim 7

Independent claim 7 is directed to a poker table comprising a tabletop, one or more supports, a translucent planar light window, a light source, and an arm rest. The tabletop defines an opaque, planar playing surface having a plurality of player stations and a dealer station. The tabletop is supported in a horizontal position and at a predetermined height by the one or more supports. The translucent, planar light window is coplanar with the plane of the playing surface. The light source is configured to project light continuously upwardly through the light window. The arm rest extends substantially around the outer periphery of the light window. Support for this claim is found, *inter alia*, in paragraphs [0017]-[0029] of the specification.

¹ Although the Office Action Summary mailed on October 29, 2007 states that claims 9 and 10 are rejected, the Detailed Action mailed on October 29, 2007 states that claims 9 and 10 are allowed. The Detailed Action allowing claims 9 and 10 is consistent with the previous Office Action mailed on January 30, 2007, allowing claims 9 and 10. In this regard, it appears that the Office Action Summary contains a typographical error, and the statement in the Detailed Action allowing claims 9 and 10 should be controlling. To the extent that the Board disagrees, then Appellants also appeal the Examiner's disposition of claims 9 and 10.

B. Independent Claim 31

Independent claim 31 is directed to a poker table comprising a tabletop, one or more supports, an elongated light window, and a light source. The tabletop defines an opaque, planar playing surface having a plurality of player stations and a dealer station. The tabletop is supported in a horizontal position and at a predetermined height by one or more supports. The elongated light window extends around a substantial portion of the periphery of the playing surface and past the plurality of player stations. The light source is configured to project light continuously through the light window to the space above the playing surface. Support for this claim is found, *inter alia*, in paragraphs [0017]-[0029] of the specification.

VI. GROUND OF REJECTION TO BE REVIEWED ON APPEAL

In the Final Office Action, the Examiner rejected claims 7, 22 and 31-40 as follows:

- Claims 7, 31, 32 and 37-40 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over U.S. Patent Application Publication No. 2001/0030393 to Flannery (the “Flannery application”).
- Claims 33-36 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application in view of specified “Official Notices.”
- Claim 22 is listed as “rejected” in the Office Action Summary mailed on October 29, 2007, but the Detailed Action mailed on October 29, 2007, fails to state the grounds of rejection. Claim 22 has elements in common with claim 34, and it appears that the Examiner probably intended to reject claim 22 for the same reasons as she rejected claim 34.

A. Statement of Issues

- 1) Whether claims 7, 31, 32 and 37-40 are unpatentable under 35 U.S.C. § 103(a) over the Flannery application.

- 2) Whether claims 22 and 33-36 are unpatentable under 35 U.S.C. § 103(a) over the Flannery application in view of specified "Official Notices."

B. Grouping of Claims

Regarding Issue No. 1, above, claims 31, 32 and 37-40 stand or fall together. Separately patentable is claim 7.

Regarding Issue No. 2, above, claims 35 and 36 stand or fall together. Separately patentable are claims 22, 33 and 34.

VII. ARGUMENT

A. The Rejection of Claims 7, 31, 32 and 37-40 Under 35 U.S.C. § 103(a) Based upon the Flannery Application

On pages 2-3 of the Final Office Action, claims 7, 31, 32 and 37-40 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application. Claims 7 and 31 are independent, and claims 32 and 37-40 all depend from independent claim 31.

1. Independent Claim 7

Independent claim 7 was rejected under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application. The Flannery application, however, fails to disclose a poker table having all of the features of independent claim 7, and the missing features would not have been obvious to a person of ordinary skill in the art.

The Flannery application discloses a casino game having a playing surface 14 with a betting area 20. The betting area includes a large number of betting spaces 22 stacked in a pyramidal group 24 and a rectangular group 26. Each betting space 22 is formed of a translucent material and is separately illuminated by a light located beneath the playing surface 14. A panel of switches 47 is controllably operated by a croupier 16, to selectively illuminate the individual betting spaces 22. A betting space 22 is withdrawn from the betting field by extinguishing the light beneath it.

Rejected independent claim 7 defines a poker table including the following elements: (1) a tabletop defining a planar playing surface; (2) one or more supports for supporting the tabletop; (3) a translucent, planar light window coplanar with the plane of the playing surface; (4) a light source configured to project light continuously upwardly through the light window; and (5) an arm rest extending substantially around the outer periphery of the light window.

In rejecting independent claim 7, the Examiner asserted as follows:

Flannery teaches a table, an opaque tabletop, a dealer, a plurality of player positions, a translucent planar window with a light source (see figure 1 and [0023]. Flannery fails to teach that his light window extends around the game table. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the light source [sic – window?] anywhere desired or expedient on the table. Such would be considered a design issue and would present little or no difficulty to one of ordinary skill.

Thus, in rejecting independent claim 7 based on the Flannery application, the Examiner has implicitly asserted that Flannery's individual betting spaces 22 correspond to Applicants' claimed "light window" and that the individual lights located beneath those individual betting spaces 22 correspond to Applicants' claimed "light source." The Examiner's implicit assertion is incorrect. These betting spaces are arranged in the *center* of the playing surface 14, and this contrasts with the light window of independent claim 7, which is arranged so that the arm rest extends substantially around the light window's outer periphery.

It would not have been obvious to have modified Flannery's casino game so that the arm rest extends substantially around the light window's outer periphery, because that would defeat the entire purpose of the betting spaces 22. The betting spaces need to be arranged in the center of the playing surface 14, away from the arm rest, so that the betting spaces can be reached by the croupier and players.

Additionally, Applicants' invention is distinguishable from Flannery's casino game even if it were to be modified in the manner asserted by the Examiner. Flannery's lighting system is configured merely to highlight selected betting spaces and thereby show the progress

of the game. This is an important feature of Flannery's lighting system; it would defeat the entire purpose of Flannery's casino game for the lights to be switched on *continuously*.

This contrasts with the light source of Applicants' invention, which is configured to project light *continuously* through the translucent light window. Independent claim 7 specifically states that the light source is configured to project light *continuously* through the light window.

It would not have been obvious to have modified Flannery's casino game to provide this feature of continuous illumination, because that would defeat the entire purpose of the betting spaces 22. Selectively illuminating individual betting spaces is necessary to show the progress of the game.

Moreover, Applicants note that the Examiner has failed to point out *why* persons skilled in the art would have chosen to modify Flannery's game table to include a built-in lighting system of the kind being claimed. Any illumination of the space above Flannery's game table is minimal and incidental to its stated function of highlighting individual betting spaces 22 to help gamers track of available betting fields. Principal lighting of that space presumably is provided by an *external* lighting system. Thus, the Flannery application lacks any suggestion about integrating a tabletop illumination system into the table itself, and a person of ordinary skill in the art could not have reasonably expected to achieve a tabletop illumination system using the betting spaces 22 disclosed in the Flannery application.

For these reasons, the rejection of independent claim 7 under 35 U.S.C. § 103(a) based upon the Flannery application is improper and should be reversed.

2. Independent Claim 31 and Dependent Claims 32 and 37-40

Independent claim 31 was rejected under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application. As with independent claim 7, the Flannery application fails to disclose a poker table having all of the features of independent claim 31, and the missing features would not have been obvious to a person of ordinary skill in the art.

Rejected independent claim 31 defines a poker table including the following elements: (1) a tabletop defining a planar playing surface having a plurality of player stations; (2) one or more supports for supporting the tabletop; (3) an elongated light window extending around a substantial portion of the periphery of the playing surface and past the plurality of player stations; and (4) a light source configured to project light continuously through the light window.

In rejecting independent claim 31, the Examiner asserted as follows:

Flannery teaches a table, an opaque tabletop, a dealer, a plurality of player positions, a translucent planar window with a light source (see figure 1 and [0023]. Flannery fails to teach that his light window extends around the game table. It would have been obvious to one of ordinary skill in the art at the time the invention was made to place the light source [sic – window?] anywhere desired or expedient on the table. Such would be considered a design issue and would present little or no difficulty to one of ordinary skill.

Thus, in rejecting independent claim 31 based on the Flannery application, the Examiner has implicitly asserted that Flannery's individual betting spaces 22 correspond to Applicants' claimed "light window" and that the individual lights located beneath those individual betting spaces 22 correspond to Applicants' claimed "light source." The Examiner's implicit assertion is incorrect. These betting spaces are arranged in the *center* of the playing surface 14, and this contrasts with the light window of independent claim 31, which is arranged so that the light window extends around a substantial portion of the periphery of the playing surface and past the plurality of player stations.

It would not have been obvious to have modified Flannery's casino game so that the light window extends around a substantial portion of the periphery of the playing surface and past the plurality of player stations, because that would defeat the entire purpose of the betting spaces 22. The betting spaces need to be arranged in the center of the playing surface 14, away from the periphery of the playing surface, so that the betting spaces can be reached by the croupier and players.

Additionally, Applicants' invention is distinguishable from Flannery's casino game even if it were to be modified in the manner asserted by the Examiner. Flannery's lighting system is configured merely to highlight selected betting spaces and thereby show the progress of the game. This is an important feature of Flannery's lighting system; it would defeat the entire purpose of Flannery's casino game for the lights to be switched on *continuously*.

This contrasts with the light source of Applicants' invention, which is configured to project light *continuously* through the light window. Independent claim 31 specifically states that the light source is configured to project light *continuously* through the light window.

It would not have been obvious to have modified Flannery's casino game to provide this feature of continuous illumination, because that would defeat the entire purpose of the betting spaces 22. Selectively illuminating individual betting spaces is necessary to show the progress of the game.

Moreover, Applicants note that the Examiner has failed to point out *why* persons skilled in the art would have chosen to modify Flannery's game table to include a built-in lighting system of the kind being claimed. Any illumination of the space above Flannery's game table is minimal and incidental to its stated function of highlighting individual betting spaces 22 to help gamers track of available betting fields. Principal lighting of that space presumably is provided by an *external* lighting system. Thus, the Flannery application lacks any suggestion about integrating a tabletop illumination system into the table itself, and a person of ordinary skill in the art could not have reasonably expected to achieve a tabletop illumination system using the betting spaces 22 disclosed in the Flannery application.

For these reasons, the rejection of independent claim 31 under 35 U.S.C. § 103(a) based upon the Flannery application is improper and should be reversed.

Rejected dependent claims 32 and 37-40 all depend from independent claim 31 and more particularly define the invention. In particular, claim 37 recites a poker table "wherein the light window extends around the entire periphery of the playing surface." A single one of Flannery's betting spaces cannot extend "around the entire periphery of the playing surface,"

because the betting spaces were simply not meant to be arranged in this way. For all of the reasons discussed above, the rejection of dependent claims 32 and 37-40 under 35 U.S.C. § 103(a) based upon the Flannery application is improper and should be reversed.

B. The Rejection of Claims 22 and 33-36 Under 35 U.S.C. § 103(a) Based upon the Flannery Application in View of Specified "Official Notices."

On page 3 of the Final Office Action, claims 33-36 were rejected under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application in view of specified "Official Notices." Claims 33-36 all depend from independent claim 31, discussed above.

Claim 22 is listed as "rejected" in the Office Action Summary mailed on October 29, 2007, but the Detailed Action mailed on October 29, 2007 fails to state the grounds of rejection. Claim 22 has elements in common with claim 34, and it appears that the Examiner probably intended to reject claim 22 for the same reasons as she rejected claim 34. Claim 22 depends from independent claim 7, discussed above.

1. Dependent Claim 22

Dependent claim 22 depends from independent claim 7. The Examiner has rejected this dependent claim under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application in view of specified "Official Notices." By definition, a proper dependent claim necessarily is narrower than the claim from which it depends. Because the rejection of independent claim 7 under 35 U.S.C. § 103(a) based upon the Flannery application is improper and should be reversed, for the reasons discussed above, the rejection of claim 22 under 35 U.S.C. § 103(a), likewise, is improper and should be reversed.

2. Dependent Claims 33 and 34

Dependent claim 33 depends from independent claim 31, and dependent claim 34 depends from claim 33. The Examiner has rejected these dependent claims under 35 U.S.C. § 103(a), as allegedly obvious over the Flannery application in view of specified "Official Notices." By definition, a proper dependent claim necessarily is narrower than the claim from which it depends. Because the rejection of independent claim 31 under 35 U.S.C. § 103(a) based

upon the Flannery application is improper and should be reversed, for the reasons discussed above, the rejection of claims 33 and 34 under 35 U.S.C. § 103(a), likewise, is improper and should be reversed.

Additionally, dependent claims 33 and 34 require that the poker table include “an arm rest extending around the outer periphery of the light window.” As discussed above in connection with independent claim 7, it would not have been obvious to have modified Flannery’s casino game so that the arm rest extends around the light window’s outer periphery, because that would defeat the entire purpose of the betting spaces 22. The betting spaces need to be arranged in the center of the playing surface 14, away from the arm rest, so that the betting spaces can be reached by the croupier and players. For this additional reason, the rejection of claims 33 and 34 under 35 U.S.C. § 103(a) is improper and should be reversed.

3. Dependent Claims 35 and 36


Dependent claim 35 depends from dependent claim 32, which in turn depends from independent claim 31. Dependent claim 36 depends from dependent claim 35. The Examiner has rejected the dependent claims 35 and 36 under 35 U.S.C. § 103(a) as allegedly obvious over the Flannery application in view of specified “Official Notices.” By definition, a proper dependent claim necessarily is narrower than the claim from which it depends. Because the rejection of independent claim 31 under 35 U.S.C. § 103(a) based upon the Flannery application is improper and should be reversed, for the reasons discussed above, the rejection of claims 35 and 36 under 35 U.S.C. § 103(a), likewise, is improper and should be reversed.

VIII. Conclusion

For the reasons set forth above, the rejections of the claims are improper and should be reversed. A decision directing the Examiner to issue a Notice of Allowance is respectfully requested.

Respectfully submitted,

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IX. CLAIMS APPENDIX

Claims 1-6 (canceled).

Claim 7: A poker table comprising:

- a tabletop defining an opaque, planar playing surface having a plurality of player stations and a dealer station;

- one or more supports for supporting the tabletop in a horizontal position and at a predetermined height;

- a translucent, planar light window, coplanar with the plane of the playing surface;

- a light source configured to project light continuously upwardly through the light window; and

- an arm rest extending substantially around the outer periphery of the light window.

Claim 8 (canceled).

Claim 9: A game table comprising:

- a playing surface configured to be disposed at a predetermined height, wherein said playing surface defines one or more player stations and a dealer stations;

- a light window disposed adjacent said playing surface, wherein said light window is disposed adjacent all of said one or more player stations;

- a light source disposed beneath said light window for projecting light upward; and

- a light trough rigidly secured to the underside of the playing surface for carrying said light source, said light source disposed at least partially beneath said light window, wherein said light trough is configured in a generally C-shaped cross-section defining first and second vertical risers and a connecting floor.

Claim 10: A game table as recited in claim 9, wherein said first vertical riser is securely fastened to the underside of the playing surface and located such that a portion of said light trough extends outwardly from an edge of said playing surface.

Claims 11-21 (canceled).

Claim 22: The poker table as recited in claim 7, wherein the arm rest includes:

- a rigid plate extending around the periphery of the light window; and
- a pad overlaying the upper surface of the rigid plate.

Claim 23-30 (canceled).

Claim 31: A poker table comprising:

- a tabletop defining an opaque, planar playing surface having a plurality of player stations and a dealer station;

- one or more supports for supporting the tabletop in a horizontal position and at a predetermined height;

- an elongated light window extending around a substantial portion of the periphery of the playing surface and past the plurality of player stations; and

- a light source configured to project light continuously through the light window to the space above the playing surface.

Claim 32: The poker table as recited in claim 31, wherein the light window is planar and coplanar with the playing surface.

Claim 33: The poker table as recited in claim 32, further including an arm rest extending around the outer periphery of the light window.

Claim 34: The poker table as recited in claim 33, wherein the arm rest includes:

- a rigid plate extending around the outer periphery of the light window; and
- a pad overlaying the upper surface of the rigid plate.

Claim 35: The poker table as recited in claim 32, wherein the light window is translucent.

Claim 36: The poker table as recited in claim 35, wherein the light window is formed of milk-colored plexiglas.

Claim 37: The poker table as recited in claim 31, wherein the light window extends around the entire periphery of the playing surface.

Claim 38: The poker table as recited in claim 31, wherein the light window is discontinuous around the periphery of the playing surface.

Claim 39: The poker table as recited in claim 31, wherein the light source includes a plurality of fluorescent light fixtures arranged adjacent to the elongated light window.

Claim 40: The poker table as recited in claim 31, wherein the playing surface is generally oval-shaped.

X. EVIDENCE APPENDIX

None.

XI. RELATED PROCEEDINGS APPENDIX

None.